COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 16 of 2002

National Insurance Company Ltd. ..... **Appellant.**

Versus

Mahendra Singh
and another. ..... **Respondents.**

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 30 of the Workmen's Compensation Act, 1923 (in short the Act) against the judgment and Award, dated 14-12-2001, passed in Case No. W.C.A. 18 of 2000, Mahendra Singh Vs. Sri Darshan Lal Arora and another, by the Workmen's Compensation Commissioner & Asstt. Labour Commissioner Garhwal Region, Dehradun (***hereinafter referred to as the Commissioner***), whereby the learned Commissioner has awarded a sum of Rs. 2,41,992/- in favour of the claimant-respondent no. 1 with certain directions, as against the Opposite Party No. 2-appellant. Aggrieved, the Insurance Company-appellant has come up in appeal with a prayer to set aside the impugned judgment and award and has assailed the impugned judgment and award contending that the judgment and award is not based on evidence on record and is illegal as disability has been assessed to be 100% instead of 40% and has also framed the substantial questions of law in memo of appeal-1. Whether the learned Commissioner erred in not relying upon the disability certificate filed in the case. 2. Whether loss of earning capacity was not properly appreciated, 3. Whether partial disablement and permanent disablement were not distinguished and 4. Whether the learned Commissioner acted arbitrarily in the proceedings.

Brief facts that claimant-respondent no. 1 filed a claim petition under the Act before the learned Commissioner alleging therein that the claimant was employed under the employment of Opposite Party No. 1 as driver of Vikram Tempo No. U.P.-07B/2304. On 29-8-2004 when the claimant was driving the vehicle, then at Lalpul Patel Nagar, Dehradun, the said Vikram met with an accident with the result the claimant sustained injuries. The claimant was brought to Doon Hospital for treatment and after first aid treatment, he was referred to Himalayan Hospital, Jolly Grant, Dehradun, where he had undergone treatment for some time. Thereafter, he was again referred to Ashirbad Hospital Bullupur and got treatment there. The claimant had incurred expenses of about Rs. 60,000/- in his treatment. In the accident his right leg has been completely damaged and he has become permanent disabled to work as driver. The claimant was aged 35 years and was getting salary or Rs. 3000/- per month. The vehicle in question was duly insured with the appellant O.P. No. 2 claim petition has been filed for the amount of Rs. 2,39,293 with interest, etc.

The Opposite Party No. 1 filed his written statement and admitted the allegations made in the claim petition including the factum of accident. However, it has been pleaded that the claimant was being paid Rs. 2000/- per month as salary. It has also been pleaded that the liability to pay compensation rests on the O.P. No. 2- appellant. The Opposite Party-appellant has contested the claim petition by filing its written statement. It has admitted the injuries caused to the claimant on 29-8-2000 and that the vehicle was duly insured. The appellant has however disputed the relationship of employer and servant between the claimant and O.P. No. 1 It has been pleaded that no F.I.R. of the accident was lodged and Insurance Company was not informed by the owner.

The learned Commissioner framed as many as three Issues. Issue No. 1 related to the employment of claimant-driver with Opposite Party No. 1 Issue No. 2 related to accident having

taken place during the course of employment. Issue no. 3 related to relief. The claimant has filed documentary evidence and has also examined himself as witness. He has stated that he was driver of the vehicle of O.P. No. 1, which was placed in the care of one Azad Hasan. On 29-8-2000 at about 2 p.m., he was driving the said vehicle from Claimant Town to Dehradun and at Patel Nagar Lal Pul, he lost control of the vehicle and the vehicle overturned with the result his right leg was came under tempo. According to him, he has spent about Rs. 1,50,000/- on his treatment and his leg has been amputated. He was getting Rs. 3000/- per month as salary in addition to Rs. 20/- as daily allowance. Sri Azad Hasan was the Power of Attorney of the owner in respect of the vehicle in question. This witness has been cross-examined on behalf of the appellant- O.P. No. 2 and he has testified his version given in his examination-in-chief. The claimant has also adduced on witness Dinesh Kumar, who has testified that the vehicle in question met an accident on 29-8-2000 in which the claimant sustained injuries. On the other hand, Azad Hasan was adduced as witness on behalf of the O.P. No. 1 respondent no. 2 and this witness has stated that the claimant was being paid Rs. 2000/- per month as salary.

The learned Commissioner after hearing both the parties and considering the evidence found on Issue No. 1 that the claimant was under the employment of O.P. No. 1, who sustained injuries on 29-8-2000 as result of motor accident. On Issue No. 2 the learned Commissioner came to the conclusion that the point stood answered on Issue No. 1. On Issue No. 3, after discussing the evidence, the learned Commissioner assessed the income of the injured claimant to be Rs. 2000/- per month.. His aged was determined to be 33 years on basis of documentary evidence. Learned Commissioner then found 40% disability as per disability certificate issued by Chief Medical Officer concerned; but relying on the verdict of the Apex Court and finding that the right leg of the claimant has been amputated, came to the conclusion that the claimant has become permanent disabled to work as driver in future

and has lost prospect of getting a job as such. Ultimately, the learned Tribunal has determined compensation amount at Rs. 2,42,992/-. Since the vehicle in question was insured with the appellant, the learned Tribunal has ordered the Insurance Company to pay the compensation amount by way of Bank Draft/Cheque in favour of the Commissioner within one month.

We have heard the learned counsel for the appellant, Mr. K.K. Shah, as well as learned counsel for the respondent-claimant, Mr. R.P. Nautiyal and have carefully gone through the entire material before us as well as the impugned judgment and award and the substantial questions of law framed in appeal, as detailed above.

The only point pressed before us that the learned Commissioner has taken the disability as 100%, whereas the Medical Certificate, issued by the C.M.O., certified the disability at 40%. In this regard substantial question has also been framed. The contention of the appellant is also devoid of merit. It has been proved on record that the claimant-respondent was employed as driver and his right leg having been amputated, he has become totally unfit to allow him to work as driver in future. The learned Commissioner has elaborately discussed the verdict of the Apex Court in his judgment and award. We have considered the entire material on record in the light of pronouncements of the law laid down by the Apex Court. Having considered the entire material, we are of the opinion, that there is no substance in either of the substantial questions framed by the appellant-Company. In any view of the matter, we fail to take a different view on this count. We hold that this finding of the court below does not require any interference by this Court.

Having scrutinized the grounds taken in the memo of appeal in the light of material on record, we are of the view that the

Judgment and award under appeal does not suffer from any illegality or infirmity, Accordingly, the appeal fails on merit and is liable to be dismissed.

The appeal is dismissed. The judgment and award under appeal is, upheld. No order as to costs.

19-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP